

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
MR. HANK WILTON D/B/A THE WILTON COMPANIES
D/B/A THE WILTON COMPANIES LLC
VWP PERMIT NO. WP4-01-1662**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and The Wilton Companies, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “The Wilton Companies, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. “Facility” means the permitted site for the proposed shopping center, John Rolfe Commons which is owned by The Wilton Companies and is located in western Henrico County, Virginia along the northwest corner of the intersection between Ridgefield Parkway and John Rolfe Parkway.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “Permit” means Virginia Water Protection (VWP) Permit No. WP4-01-1662.

SECTION C: Findings of Fact and Conclusions of Law

1. The Wilton Companies applied for a VWP General Permit to construct a commercial shopping center in western Henrico County, known as John Rolfe Commons. The VWP Permit No. WP4-01-1662 (the Permit), was issued on December 17, 2001.
2. The facility is a 34.86 acre parcel and the project includes access roads, buildings, and parking lots. The proposed activity will permanently impact 1.33 acres of forested wetlands (which requires a 2:1 ration mitigation). These forested wetlands are a small headwater tributary wetlands connected to a much larger waters/wetlands system.
3. The Permit requires that the permittee submit documentation to DEQ that the US Army Corp of Engineers (ACOE) did debit the required 2.66 mitigation bank credits from the James River Mitigation Landbank ledger within 60 days of permit issuance as required by Part II.A.2 of the Permit; and in accordance with Regulation 9 VAC 25-210-90. Sixty days from permit issuance would have been February 15, 2002.
4. A Warning Letter was mailed to The Wilton Companies on March 11, 2002, requesting corrective action to address the alleged failure to submit documentation to verify that the wetland mitigation credits had been debited by the ACOE.
5. DEQ issued a NOV to The Wilton Companies on May 28, 2002, citing the above violations and for failure to purchase the wetland mitigation credits.
6. On June 19, 2002, The Wilton Companies met with DEQ to discuss resolution of the violations cited in the May 28, 2002 NOV.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders The Wilton Companies and The Wilton Companies agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders The Wilton

Companies, and The Wilton Companies voluntarily agrees, to pay a civil charge of \$2,500 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this order and shall note the Federal Identification Number for The Wilton Companies. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of The Wilton Companies, for good cause shown by The Wilton Companies, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, The Wilton Companies admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The Wilton Companies consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Wilton Companies declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by The Wilton Companies to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations.

Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Wilton Companies shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The Wilton Companies shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Wilton Companies shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and The Wilton Companies. Notwithstanding the foregoing, The Wilton Companies agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to The Wilton Companies. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve The Wilton Companies from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, The Wilton Companies voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2002.

Robert G. Burnley, Director
Department of Environmental Quality

The Wilton Companies voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of _____, 2002, by _____, who is
(name)
_____ of The Wilton Companies, on behalf of The Wilton Companies.
(title)

Notary Public

My commission expires: _____.

APPENDIX A

The Wilton Companies shall:

1. **By August 1, 2002**, purchase the 2.66 wetland mitigation credits from the James River Mitigation Landbank, as required by the Permit.
2. **By September 1, 2002**, submit to DEQ, documentation that the USACE has debited the required 2.66 credits from the James River Mitigation Landbank, as required by Part II.A.2 of the Permit.
2. Submit all documentation required by this Consent Special Order to:

Cynthia Akers
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060